

CIWC EXHIBIT 1.0SR

CONSUMERS ILLINOIS WATER COMPANY

SURREBUTTAL TESTIMONY

OF

TERRY J. RAKOCY

OFFICIAL FILE  
I.C.C. DOCKET NO. 00-0366  
CIWC Exhibit No. 1.0SR  
Witness \_\_\_\_\_  
Date 11-9-00 Reporter AB

**CONSUMERS ILLINOIS WATER COMPANY**  
**SURREBUTTAL TESTIMONY**  
**OF**  
**TERRY J. RAKOCY**

**WITNESS IDENTIFICATION AND BACKGROUND**

**Q. Please state your name and business address.**

A. Terry J. Rakocy, 1000 South Schuyler Avenue, Kankakee, Illinois, 60901.

**Q. Are you the same Terry J. Rakocy who filed Direct and Rebuttal Testimony in this proceeding?**

A. Yes, I am.

**Q. What is the purpose of your Surrebuttal Testimony?**

A. The purpose of my Surrebuttal Testimony is to respond to the Rebuttal Testimony submitted in this matter by Staff witnesses Messrs. Sant and King.

**RESPONSE TO MR. SANT**

**Q. At page 2, Mr. Sant indicates that utilities should only use estimated cost when the original cost of utility systems cannot be determined. Do you agree with this statement?**

A. Yes. In this proceeding, CIWC utilized estimates of the original cost of the water and sewer systems due to a belief that it was not possible to accurately determine an original cost of those systems from Thorngate's records. Based on the material developed in the

1 course of this proceeding with respect to the sewer system, I now believe that an original  
2 cost for that system can reasonably be developed from Thorngate's records. Provided  
3 that an apparent mathematical error in Mr. Sant's calculations is corrected, CIWC is  
4 willing to accept the calculation of the original cost of sewer plant developed using the  
5 method proposed by Mr. Sant. I will discuss the necessary correction later in my  
6 testimony. With regard to the water system, however, there are no records from which an  
7 original cost can be accurately determined. For the reasons I will discuss, I believe that  
8 CIWC's use of an estimated cost for the water system is the appropriate and best  
9 available approach. Also, use of an estimate for the water system is consistent with  
10 Accounting Instruction 17(c) quoted by Mr. Sant which indicates that an estimate should  
11 be used when records of the acquired system do not provide a basis to know the original  
12 cost of property acquired.

13  
14 **Q. At page 3, Mr. Sant references your Rebuttal Testimony indicating that Thorngate**  
15 **has never been a regulated entity or public corporation and, therefore, does not**  
16 **keep its books in accordance with Commission's Uniform System of Accounts.**  
17 **Would you comment on Mr. Sant's reference to this testimony?**

18 **A.** Yes. Mr. Sant indicates that an entity's status as a regulated or public entity is not a  
19 consideration in determining who first devoted property to utility service. CIWC does  
20 not dispute this point. I pointed out that Thorngate is not a regulated public utility or  
21 public corporation only to indicate that it has not maintained detail accounting records of  
22 the type that such entities would be expected to maintain.

1 **Q. At page 4, Mr. Sant states “Mutual Services and Thorngate are the two entities that**  
2 **first devoted the water system to public, therefore, their collective investment in**  
3 **plant cost should be reflected as original cost in the rate base calculation”. Would**  
4 **you comment on this testimony?**

5 A. Yes. CIWC agrees with this position of Mr. Sant. As discussed in my Direct and  
6 Rebuttal Testimony, however, Mutual Services is an entity which was formed solely to  
7 hold title to portions of the water and sewer systems which were located in the residential  
8 areas of the property under development. Thus, the relevant investment is that of  
9 Thorngate.

10  
11 **Q. At pages 2 and 3, Mr. Sant refers to the construction history at Ivanhoe. Would you**  
12 **comment on this testimony?**

13 A. Yes. Under an Amended and Restated Memorandum of Contract (“Amended Contract”),  
14 dated December 21, 1990, Thorngate covenanted to provide water and sewer services in  
15 accordance with the Declaration of Covenants, Conditions and Restrictions For the  
16 Mutual Water and Sewer System of Ivanhoe Club (“Declaration”). The Declaration is  
17 also dated December 21, 1990. Under these documents and the original real estate  
18 agreement dated November 9, 1987, Thorngate conveyed 38 acres of land to the Phase 2  
19 developers and agreed to construct the sewer system (on its property and in the residential  
20 areas). Thorngate also agreed to provide water and sewer utility service, using its  
21 property and that owned by Mutual Services. In return, Thorngate received \$3.5 million  
22 in cash and agreement by the Phase 2 developers to construct the water system and other  
23 infrastructure projects. Thorngate also contracted to receive an Access Fee of \$12,000  
24 for each lot in Phase 2. Copies of the Amended Contract and Declaration are attached as  
25 CIWC Exhibits 1.1SR and 1.2SR, respectively.

1 **Q. Is Mr. Sant correct in suggesting that costs associated with constructing the water**  
2 **and sewer systems are reflected in the price of lots sold by the Phase 2 developers?**

3 A. No, except with regard to Access Fees. As indicated in the Declaration, Thorngate  
4 contracted to receive a \$12,000 Access Fee in connection with each lot in the Phase 2  
5 development. These fees are charged to the purchasers of lots in Phase 2. Accordingly,  
6 the purchasers of lots in Phase 2 are required to pay costs associated with the water and  
7 sewer systems. Under CIWC's proposal, the amount of the Access Fees (including fees  
8 collected to date and those which will be paid through full development of Phase 2) are  
9 reflected as contributions which offset the original cost of the plant acquired.  
10

11 **Q. Is Mr. Sant correct in suggesting at page 5 that you believe the residential developer**  
12 **is foregoing cost recovery?**

13 A. No. As explained in my Rebuttal Testimony, the Phase 2 developers received land (and  
14 Thorngate's agreement to build the sewer system) in return for their cash and the  
15 agreement to construct the water system and other infrastructure. As Mr. Sant  
16 recognizes, developers were paid for construction of the water system by the receipt of  
17 land provided by Thorngate. Thus, the Phase 2 developers were compensated by  
18 Thorngate for the cost incurred in building the water system for Thorngate's use. The  
19 Phase 2 developers, therefore, did not forego cost recovery.  
20

21 **Q. Do you believe that the Phase 2 developers could reasonably have reflected costs**  
22 **associated with the water system in lot prices for the Phase 2 lots?**

23 A. No. For Mr. Sant's position to be accurate, it would be necessary to assume that, having  
24 already been paid to construct the water system (through the transfer of land), the Phase 2  
25 developers would seek further compensation for the cost of the water system through  
26 inclusion of the cost in the price of lots. It would be necessary to further assume that the  
27 buyers and sellers of the Phase 2 lots agreed to prices which reflected recovery of water

1 system costs once through Access Fees charged to lot purchasers, and again through a  
2 portion of the purchase price charged to lot purchasers. There is absolutely no basis for  
3 either assumption.  
4

5 **Q. Are the circumstances in Commission proceedings referenced by Mr. Sant at page 4**  
6 **similar to CIWC's proposal in this proceeding?**

7 A. No. As discussed above, there is no evidence in this proceeding indicating that (aside  
8 from the Access Fees) any cost associated with the water system were recovered by the  
9 developers through lot sales, customer contributions or tax write-offs. Accordingly, the  
10 situation discussed in the referenced dockets does not exist in this proceeding.  
11

12 **Q. Is Mr. Sant correct in suggesting at page 5 that Thorngate has no investment in the**  
13 **water system?**

14 A. No. As Mr. Sant recognizes, in return for land provided to the developers, Thorngate  
15 received cash and the developers' agreement to construct the water system and other  
16 infrastructure items. Therefore, Thorngate's investment in the water system is equivalent  
17 to the value of the portion of the 38 acres of land which was transferred to the Phase 2  
18 developers in return for construction of the water system.  
19

20 **Q. Does Mr. Sant recognize this point?**

21 A. It does not appear so. At page 6, Mr. Sant indicates that Thorngate paid for the water  
22 system and other infrastructure items with the "cost of its land exchanged net of any cash  
23 received by Thorngate." This statement is not logical or correct. The original cost of the  
24 land reflects only the amount originally paid by Thorngate for the land. At the time of  
25 the transfer, however, the value of the land had changed. Thorngate paid for the water  
26 system, not with the "cost of its land exchanged" but with the value of its land  
27 exchanged. In the transaction, the value of Thorngate's land exchanged was equivalent

1 to the sum of: (i) the amount of cash received by Thorngate; and (ii) the value of the  
2 water system and other infrastructure which the Phase 2 developers agreed to construct.  
3 Mr. Sant's suggestion that the value should be reduced by the amount of cash received is  
4 illogical. There is no basis to subtract the amount of cash received in determining the  
5 value of Thorngate's payment to the Phase 2 developers.  
6

7 **Q. At page 9, Mr. Sant references your testimony indicating the cost of the water**  
8 **facilities is not reflected in Thorngate's accounts. Would you comment on this**  
9 **testimony?**

10 A. Yes. At page 9, Mr. Sant suggests that my testimony is consistent with Mr. Sant's  
11 suggestion that Thorngate has no remaining investment in the 38 acres of land nor the  
12 water system. There is, however, no relationship between my statement and the  
13 conclusion of Mr. Sant. The purpose of my statement was to indicate only that there is  
14 no reference to the cost of the water facilities and any of Thorngate's accounts. This is  
15 because, as I have discussed, the water facilities were constructed for Thorngate (and  
16 Mutual Services) by the Phase 2 developers.  
17

18 **Q. Is Mr. Sant correct in suggesting that Thorngate had no investment in the land**  
19 **because it sold the land at a profit?**

20 A. No. As explained above, the amount of Thorngate's investment in the water system is  
21 the value of the land exchanged by Thorngate for that system. The fact that the value of  
22 the land at the time of the exchange for the water system exceeded its original cost  
23 certainly does not suggest that Thorngate does not have an investment in the water  
24 system. There is no logical basis for this conclusion.  
25

1 **Q. Are records available from which the portion of the value of land transferred to the**  
2 **Phase 2 developers in return for the promise to construct the water system can be**  
3 **determined?**

4 A. There is no basis in the records to determine a precise amount. However, a reasonable  
5 estimate can be developed. As Mr. Sant indicates, the developers provided cash in the  
6 amount of \$3.5 million and an agreement to construct the water system and other  
7 infrastructure in return for Thorngate's land. While there is no specific amount assigned  
8 to the promise to construct the water system, I believe the estimate made by CIWC of the  
9 cost of constructing such a water system at the time of construction is a reasonable  
10 estimate of the value which should be assigned to the applicable portion of the land.  
11

12 **Q. What is the estimated cost for construction for the water system?**

13 A. As indicated in my Direct Testimony and Exhibit H, CIWC estimated that the original  
14 cost of the water system by determining the present day cost of the system and trending  
15 that cost back to the time of construction. Using this approach, CIWC estimated that, at  
16 the time constructed, the cost of the water system was \$1,624,987, and that applicable  
17 accumulated depreciation is \$256,504. Therefore, the estimated net utility plant in  
18 service for the water system is \$1,368,483, as shown on Exhibit H. CIWC believes that  
19 this is the best available evidence of the original cost of the water system at the time that  
20 it was first devoted to public service.  
21

22 **Q. At page 4, Mr. Sant suggests that construction cost borne by the Phase 2 developers**  
23 **should not be considered in determining the net original cost of the water system.**  
24 **Do you agree with this position?**

25 A. No. As discussed above, Thorngate contracted with the Phase 2 developers to build the  
26 water system and transfer title to Thorngate and Mutual Services. Therefore, the  
27 payment provided by Thorngate to the Phase 2 developers in the form of land represents



1 Thorngate's investment in the water system. The developers contracted to construct the  
2 water system for Thorngate (and Mutual Services). As discussed above, I believe the  
3 estimated cost of the water system is the best available measure of the value of  
4 Thorngate's payment.  
5

6 **Q. Would you comment on Mr. Sant's development of the water original cost?**

7 A. Yes. In developing water original cost, Mr. Sant has included an amount of Utility  
8 Plant-in-Service which is limited to level of contributed plant, plus \$100. The amount  
9 corresponds to that shown in column G of Schedule 4, which Mr. Sant included with his  
10 direct testimony (with an adjustment to include the amount of cash paid by CIWC for the  
11 acquisition). Mr. Sant, however, has excluded the bulk of the original cost of the water  
12 system. As discussed above, the Net Utility Plant-in-Service consistent with the original  
13 cost of the water system at the time it was first devoted to public service is \$1,368,483, as  
14 compared to Mr. Sant's calculation of \$483,940.  
15

16 **Q. Would you further comment on the level of water net original cost proposed by**  
17 **Mr. Sant?**

18 A. Yes. After a deduction for contributions, Mr. Sant proposes a net original cost of water  
19 plant in the amount of \$100. Under these circumstances, CIWC would have no incentive  
20 to acquire or operate a small system, such as that of Ivanhoe. If there is little or no rate  
21 base assigned to a utility operation, there is no opportunity to earn a profit.  
22

1 **Q. Has the Commission recognized in past orders that, when small water system**  
2 **property is acquired for a purchased price below original cost, the full original cost**  
3 **of property at the time it was first devoted to public service should be recognized in**  
4 **rate base?**

5 A. Yes. This is particularly true in circumstances where a failure to recognize the full  
6 original cost would result in a remaining rate base which is either low or a negative  
7 amount. The Commission has recognized that, in such circumstances, it is necessary to  
8 recognize the full original cost of property acquired in order to provide a proper incentive  
9 for acquisitions, such as the one in the present case, which are in the public interest. As  
10 the Commission recognized in Rollins Sewer and Water Company, Docket 83-0693  
11 (Oct. 30, 1984), a failure to recognize the original cost of property as first devoted to  
12 public service would raise "yet another disincentive or impediment" to the acquisition of  
13 a small water system. The Commission also recognized this point in Consumers Illinois  
14 Water Company, Docket 88-0045 (Oct. 12, 1988).

15  
16 **Q. What is CIWC's position with regard to the water original cost?**

17 A. CIWC's position is that the original cost of water plant shown in Exhibit H, which  
18 accompanied my Direct Testimony, is appropriate. This balance reflects a reasonable  
19 estimate of the cost of the plant acquired as of the time it was first devoted to public  
20 service. As discussed in my Rebuttal Testimony, CIWC accepts Mr. Sant's proposal to  
21 use Access Fees as a measure of related contributions. CIWC Exhibit 1.3SR shows the  
22 appropriate level of water rate base using the original cost of plant from Exhibit H, and  
23 Mr. Sant's proposed level of water contributions.

1 **Q. You discussed a mathematical error which you believe appears in Mr. Sant's**  
2 **calculation of original cost for the sewer system. Would you discuss that error.**

3 A. Yes. In his Direct Testimony, in calculating the original cost of plant for the sewer  
4 system, Mr. Sant used the sum of columns F, G and H, which appear on his Schedule 4  
5 for the sewer system. In his Rebuttal Testimony, Mr. Sant recognizes that, as CIWC  
6 pointed out in its Rebuttal Testimony, the balances he shows as costs associated with the  
7 water system on Schedule 4 in columns F and H, should actually have been recorded as  
8 sewer system costs. When the amounts shown in columns F and H for the water system  
9 are transferred to columns F and H for the sewer system, the balances of these columns  
10 are, respectively, \$1,974,441, \$596,160 and \$303,484. The sum of these numbers is  
11 \$2,874,085. Mr. Sant, however, reflects a Utility Plant-in-Service balance of only  
12 \$2,277,925. It appears that, in calculating this balance, Mr. Sant inadvertently excluded  
13 contributed plant in the amount of \$596,160. Mr. Sant properly included contributed  
14 plant in developing his Utility Plant-in-Service balance for both the water and sewer  
15 systems on Schedule 2 of his Direct Testimony, and for the water system on Schedule 7  
16 of his Rebuttal Testimony. CIWC assumes that the failure to reflect the amount of  
17 contributed plant for the sewer system on Mr. Sant's Schedule 7 of his Rebuttal  
18 Testimony was inadvertent.

19  
20 **Q. Is there a reason why is it necessary to reflect contributed plant in the Utility**  
21 **Plant-in-Service balance?**

22 A. Yes. As shown on Schedule 7, Mr. Sant deducts contributions of \$596,160 in  
23 determining his net original cost of plant. If the contributed plant is not included in the  
24 Utility Plant-in-Service balance, the deduction for contributions is being made from an  
25 amount which does not include the contributed plant. Such a deduction would be clearly  
26 inappropriate.

1   **Q.   With regard to the net original cost of the sewer system, what is CIWC's position?**

2   A.   As indicated above, if the apparent mathematical error is corrected, CIWC will accept  
3       Mr. Sant's determination of the net original cost of sewer plant based upon Thorngate's  
4       records. The amount of Sewer Utility Plant-in-Service proposed by Mr. Sant compares  
5       favorably with the estimate developed by CIWC (as set forth in Exhibit H, page 2). The  
6       appropriate net original cost is shown on CIWC Exhibit 1.3SR. The Exhibit reflects use  
7       of the level of contributions developed by Mr. Sant.

8  
9   **Q.   Would you comment on Mr. Sant's testimony regarding future rate increases?**

10   A.   Yes. CIWC and Staff are in agreement with regard to this issue. Mr. Sant indicates that,  
11       if CIWC provides "quality and informative Supplemental Annual Reports," the  
12       Commission would not automatically suspend rates filed by CIWC at the time of an  
13       increase in rates by the Village of Mundeline. CIWC believes that this is a reasonable  
14       approach. Under the circumstances of the present case, CIWC is acquiring a property in  
15       which it is anticipated that rates in effect will match those in effect in a nearby village.  
16       CIWC's agreement with Thorngate anticipates that this rate approach will be maintained  
17       for 10 years, after which rates will be set by the Commission at the level deemed  
18       appropriate. CIWC has agreed to provide Supplemental Annual Reports with  
19       information which will demonstrate that the Mundeline rates are not providing an  
20       excessive return. CIWC has further agreed that it would reduce rates and provide  
21       customer refunds in the event that an excessive return is realized. Under these  
22       circumstances, CIWC believes that Mr. Sant's proposal that the Commission should  
23       examine the information provided, and not automatically suspend a rate filing is  
24       appropriate. As discussed in my Rebuttal Testimony, if CIWC were required to bear the  
25       significant cost of a rate proceeding simply to implement a new rate made effective by  
26       the Village of Mundeline, a significant disincentive to the acquisition would be created.

1 **Q. Would you summarize your position?**

2 A. Yes. As has been discussed: (i) with correction of the apparent mathematical error,  
3 CIWC and Staff are in agreement with regard to the level of net original cost of sewer  
4 plant; (ii) Staff's calculation of water net original cost should be corrected to reflect a  
5 reasonable estimate of the original cost of the water at the time it was first devoted to  
6 public service by Thorngate; and (iii) CIWC and Staff are in agreement that, if CIWC  
7 provides appropriate information in Supplemental Annual Reports, the Commission  
8 should not automatically suspend rate filings made to implement new rates established by  
9 the Village of Mundeline.

10  
11 **RESPONSE TO MR. KING**

12 **Q. At page 2, Mr. King discussed your testimony regarding Section 8-406. Would you**  
13 **comment on this testimony?**

14 A. Yes. Contrary to Mr. King's statement, it is not CIWC's position that Section 8-406 does  
15 not apply in this proceeding. I believe CIWC and Staff are in agreement that  
16 Section 8-406 does apply, and that CIWC has made the necessary showings to support  
17 issuance of a Certificate authorizing CIWC to serve the Ivanhoe area. The purpose of my  
18 Rebuttal Testimony was to point out that the particular passage of the Section quoted by  
19 Mr. King refers to a request for certification of proposed construction of a new facility.  
20 Because construction of a new facility is not involved in this proceeding, the language  
21 quoted by Mr. King would not apply. So far as I am aware, there is no dispute between  
22 CIWC and Staff regarding whether CIWC's request for issuance of a Certificate  
23 authorizing it to serve the Ivanhoe area should be approved.

24  
25 **Q. Does this conclude your testimony?**

26 A. Yes, it does.

AMENDED AND RESTATED MEMORANDUM OF CONTRACT

This Amended and Restated Memorandum of Contract ("this Memorandum") is made as of this 21<sup>st</sup> day of DEC., 1990, by and among THORNGATE COUNTRY CLUB, an Illinois corporation ("Thorngate"), CAPITOL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust No. 1250 (the "Trustee"), BROOK-RIDGE DEVELOPMENT, INC., an Illinois corporation ("Brook-Ridge"), RED TOP DEVELOPMENT CORPORATION, an Illinois corporation ("Red Top") and IVANHOE DEVELOPMENT LIMITED PARTNERSHIP, an Illinois registered limited partnership ("IDL").

W I T N E S S E T H:

WHEREAS, Thorngate, the Trustee (Thorngate and the Trustee sometimes collectively referred to as the "Seller") and Brook-Ridge entered into a certain Real Estate Sale Agreement dated November 9, 1987 (the "Original Contract"), for the sale of 38 acres of land located in Lake County, Illinois legally described in Exhibit A attached hereto and made a part hereof (the "Real Estate") from Seller to Brook-Ridge;

WHEREAS, the Real Estate constitutes "Phase II" ("Phase II") of a certain planned unit development commonly known as The Ivanhoe Country Club Planned Development, as approved by the board of Trustees of Lake County on June 11, 1990 (the "Development");

*Prepared by v*  
WHEN RECORDED, RE-  
TURN TO:  
DAVID M. LESSER  
KAREN MICHENER  
1600 WEST MONROE ST.  
CHICAGO, IL 60604-3693

WHEREAS, the Original Contract was amended by a certain agreement dated March 31, 1989 (the "Amendment"). The Original Contract and the Amendment shall hereinafter collectively referred to as the "Contract";

WHEREAS, Thorngate, the Trustee, Brook-Ridge and Red Top have entered into a certain Memorandum of Contract, dated as of April 3, 1989, one counterpart original of which was executed by Thorngate and Trustee and recorded in the Office of the Recorder of Deeds of Lake County, Illinois (the "Recorder's Office") on April 6, 1989 as Document No. 2780474, and one counterpart original of which was fully executed by all of said parties and recorded in the Recorder's Office on May 30, 1989 as Document No. 2796454;

WHEREAS, the Real Estate was transferred by Seller to Red Top at the direction of Brook-Ridge On March 27, 1989;

WHEREAS, Seller has been requested to approve the transfer and assignment of vacant real estate to IDLP and to release Red Top from any and all obligations under the original contract, all amendments and recorded memoranda thereto;

WHEREAS, Red Top has now agreed to transfer the Real Estate to IDLP on or about the date hereof, with the approval of Seller; and

WHEREAS, Seller, IDLP and Brook-Ridge shall have continuing obligations with respect to the Development and the

parties desire to memorialize those certain continuing obligations as modified by the terms of this Memorandum.

NOW, THEREFORE, in consideration of the premises contained in the Contract, the release of Red Top by Seller and their consent to the transfer and assignment to IDLP, and for other good and valuable consideration, the parties agree, represent and warrant as follows:

1. Payments to Seller. In reliance upon the Original Contract and consideration owed to it by Red Top and Brook-Ridge under the Original Contract, Thorngate has expended significant funds in the installation of a waste water treatment system for the Real Estate that is intended to operate in conjunction with a potable water system for the Real Estate. In light of this reliance and, in consideration for Thorngate's covenant to provide utilities services as set forth in Section 3(8) below, Thorngate, its successors and assigns shall be paid a fee of \$12,000.00 per Residential Lot upon the purchase of said lot from IDLP and/or its successor as a one-time only hook up/access fee to the waste water treatment/potable water system owned by Thorngate. Said fee shall be payable regardless of whether or not it is contemplated at the time that said fee becomes due and payable that the lot for which it is paid will be serviced by said waste water treatment/potable water system owned by Thorngate. Upon payment, Thorngate shall provide a release of this obligation in recordable form, shall enter said payment in a book of



accounts that it shall maintain until five (5) years after the obligation to pay all of said fees is satisfied and shall, upon request by any lot owner, issue a letter for the benefit of title insurers, lenders and other appropriate parties confirming that said fee has been paid. This provision shall constitute a covenant running with touching and concerning, benefitting and burdening the Real Estate and that certain real property legally described on Exhibit B and C attached hereto and made a part hereof, commonly known as Parcel B ("Parcel B") and Parcel D ("Parcel D") of the Development, respectively, and shall encumber each subdivided residential lot as shown on Ivanhoe Club Phase II Final Plat of Subdivision certified August 2, 1990 by the Digital Group, Ltd., as amended from time to time (the "Plat of Subdivision"), until paid, and shall be shown on the final plat of subdivision of Phase II.

For the purposes of this Section 1, the term "successor" shall mean only a bulk purchaser from IDLP of all or substantially all of the lots then owned by IDLP with the intent to resell, rather than build on and then resell, said lots. Without limiting the foregoing the term "successor" shall include trustees in bankruptcy, assignees for the benefit of creditors and mortgagees acquiring title through foreclosure. The obligations contained in this Section 1 of the owner or owners of subdivided residential lots within Phase II are expressly made subject to the terms and provisions of that certain Declaration of Covenants, Conditions and

Restrictions for the Mutual Water and Sewer System of the Ivanhoe Club (the "Utility Declaration"), dated on or about the date hereof, as recorded in the Office of the Recorder of Deeds of Lake County, Illinois ("Recorder's Office"), which generally permits Thorngate to charge similar one-time only hook-up/access fees to the waste water treatment/potable water system owned by Thorngate to other property owners whose property may hereafter be added to the Development.

2. Improvement Obligations of Brook-Ridge and IDLP.

A. In lieu of sharing the cost of developing certain infrastructure as initially provided for by various of the parties, Brook-Ridge and/or IDLP shall complete the following improvements in a good and workmanlike manner, with reasonable diligence, giving due consideration to weather conditions, governmental requirements and shall pay as their sole obligation all sums called for by contracts covering any of the improvement work enumerated below upon presentation of their invoices, after approval of the improvement work by the appropriate governmental body having jurisdiction thereover;

(1) All Illinois State Rte. 176 improvements at Thorngate Drive in Lake County, Illinois, according to plans entitled "Illinois State Route 176 Improvements at Thorngate Drive, in Lake County Illinois", consisting of sheets 1 through 12, dated October 20, 1989 and prepared by Digital Group, Ltd. as originally approved by IDOT letter dated January 22, 1990, bearing file No. L-00845.

(2) All improvements required and provided for on Thorngate Drive from Rte. 176 to the north apron of the bridge or crossing of the lake or channel providing access to the Ivanhoe Club House, including but not limited to, the entryway and gate-house adjacent to Rte. 176, water lines, waste water lines, storm water system, lift stations and all utilities as shown on the Plans entitled "Ivanhoe Country Club, Lake County, Illinois," consisting of sheets 1 through 49, dated April 15, 1990, revised October 25, 1990, and prepared by The Digital Group, Ltd.

(3) All improvements in connection with the construction of the potable water system including the wells, pumping station, reservoir, and distribution system for Ivanhoe Club, Lake County, Illinois, substantially as shown on plans entitled "Proposed Pumping Station Reservoir for Ivanhoe Country Club, Lake County, Illinois", consisting of sheets 1 through 13, dated October 5, 1989, revised July 10, 1990 and prepared by Donald Manhard Associates, Inc. and, permitted by I.E.P.A. #0576-FY 1990 dated January 9, 1990. Said improvements shall be constructed on Parcel B in the vicinity of the second tee or at such other place as Thorngate shall reasonably designate; provided, however, that any incremental costs occasioned by such relocation shall be borne by Thorngate and the Trustee. Brook-Ridge and IDLP shall, upon completion, convey by Quit Claim Deed and/or Bill of Sale all right, title and interest to said potable water system to Thorngate free and

clear of all mechanics' liens and encumbrances, caused by Brook-Ridge or IDLP.

(4) All public or private improvements required on the Real Estate as required by the Utility Declaration and the Homeowners' Declaration.

B. Brook-Ridge and IDLP have the following additional obligations, at their sole cost, which shall be performed with reasonable diligence after request by Thorngate or Trustee, giving due consideration to weather conditions and governmental requirements.

(1) To deliver a deed of correction to Seller upon request for the purpose of relocating a portion of Thorngate Drive in accordance with the ALTA Plat of Survey, designated "CHMPALTA.DWG", prepared by the Digital Group, Ltd. and certified October 19, 1990 to Capitol Bank and Trust of Chicago and to Chicago Title Insurance Company.

(2) To promptly perform all obligations of owner of the Real Estate required by any ordinance or resolution of the Lake County Board, or any commissions or committees thereof, heretofore adopted, relating to the development of the Real Estate.

(3) Perform from time to time all acts and obligations required by resolution or ordinance adopted heretofore by the Lake County Board or any commissions or committees thereof and to perform all acts required by easements, restrictions and any covenants set out on that

certain Plat of Survey of Ivanhoe Country Club consisting of sheets 1 through 3, dated March 28, 1989 and recorded in the Lake County Recorder's Office on April 18, 1989 as Document No. 2784293; and

(4) Perform from time to time all acts and obligations required by the recorded Plat of Subdivision, the Utility Declaration and the Homeowners' Declaration.

C. All obligations of Brook-Ridge and IDLP under this Section 2 shall be subject to the following additional conditions;

(1) all improvements shall be deemed complete for the purposes of determining whether or not Brook-Ridge and IDLP have performed their obligations under this Section 2 if they are determined by an appropriate inspecting party to be "substantially complete," provided that Brook-Ridge and IDLP shall thereafter proceed with reasonable diligence to finally complete said improvements; and

(2) IDLP may, at its sole and absolute discretion, make, cause to be made or agree to modifications of the plans and specifications for said improvements without the prior consent of any other party, provided that said modifications do not change the capacity of or materially affect the cost or manner of operation of said improvements, and further providing that said modifications do not substantially alter the plans and specifications prepared by Donald Manhard & Associates, are generally in accord with the

I.E.P.A. permit heretofore granted, and in no event shall any such change exceed a cost in excess of Twenty-Five Thousand (\$25,000.00 Dollars. No modification to the plans and specifications for said improvements, whether or not it requires the consent of any other party, shall be required to be placed in the public record pursuant to the terms of this Memorandum. Nothing contained in this subsection (2) shall be deemed to relieve IDLP or Brook-Ridge of any obligation to obtain the approval of Lake County or any committee or commission thereof and Thorngate and Trustee shall cooperate in any proceeding required to obtain any such approval.

D. Brook-Ridge shall simultaneously with the sale by Red Top to IDLP, release Thorngate from its obligations regarding cost sharing contained in the Original Contract and those certain indemnification obligations contained in letters dated March 31, and April 3, 1989, to Brook-Ridge from Thorngate.

3. Obligations of Seller. Seller has the remaining obligations at its sole cost and obligation, promptly upon request by Brook-Ridge and/or IDLP, to:

(1) deliver a deed of correction to IDLP, or its nominee, for the purpose of relocating a portion of Thorngate Drive in accordance with the ALTA Plat of Survey, designated "CHMPALT2.DWG.", prepared by the Digital Group, Ltd. certified December 6, 1990 to Ivanhoe Development Limited Partnership and to Chicago Title Insurance Company;

(2) perform all acts or improvements required to continue in effect and at IDLP's sole cost and request, extend the 404 permit previously issued by the U. S. Army Corps of Engineers relating to the mitigation of any wetlands or compensation for flood plain located or previously located on the Real Estate;

(3) remove encroachments onto the Real Estate caused by the acts of Seller, its agents, contractors, employees or their representatives, including those encroachments shown on that certain ALTA survey of the Real Estate prepared by the Digital Group, Inc. and dated October 18, 1990 within a reasonable time after demand by IDLP or its successors in interest; or at Thorngate's option, Thorngate may purchase any lot affected by such encroachments according to IDLP's then current price list and otherwise on terms and conditions generally offered the public including, without limitation, a pass on of the \$12,000.00 fee provided for in Section 1 above if said fee would be passed on pursuant to the terms and conditions generally offered to the public;

(4) perform from time to time all acts and obligations required by resolution or ordinance adopted heretofore by the Lake County Board or any commissions or committees thereof and to perform all acts required by easements, restrictions and any covenants set out on that certain Plat of Survey of Ivanhoe Country Club consisting of sheets 1 through 3, dated March 28, 1989 and recorded in the

Lake County Recorder's Office on April 18, 1989 as Document No. 2784293;

(5) grant a construction easement in form and substance reasonably acceptable to IDLP, which easement shall be recordable and insurable, to enter upon Parcel "B" from Route 176 for the purpose of constructing the potable water system including the pumping station, wells and reservoir to be constructed pursuant to paragraph 2(a)(3);

(6) provide a separate water meter to the Club House;

(7) grant to the Homeowner's Association and to the Mutual Water and Utility Association created pursuant to the declarations of covenants, conditions and restrictions identified in Section 2 A (4) above, a permanent easement in form and substance reasonably acceptable to IDLP, which easement shall be recordable and insurable, for ingress to and egress from Parcel "B" for the purpose of maintenance and operation to the site of the potable water system, wells, pumping station and reservoir from Rte. 176 on and upon Parcel B in the event of a default on the part of Thorngate which default would entitle the Home Owner Association and/or Mutual Water and Sewer System Association to access the potable water system to ensure its maintenance and continuing function;

(8) to provide the services called for by the Utility Declaration.



4. Termination of Memorandum of Contract. In the event this Memorandum is not extended by an instrument signed by the parties hereto and recorded on or before ten (10) years from the date hereof, the obligations on said date of the parties under the Contract shall be deemed to have been fulfilled or otherwise terminated and terms and provisions of the Contract and this Memorandum shall be of no further force and effect. This Memorandum supersedes and takes the place of Documents No. 2780474 and 2796454, and the provisions of paragraph 9(b) and 9(c) of the Original Contract, which documents and provisions are expressly abrogated and are no longer of any force and effect.

5. Individual Lot Owners. The obligations of Brook-Ridge and/or IDLP under this Contract, other than the obligation to pay the fee described in Section 1 above, shall not be binding upon any purchaser of all or any portion of the Real Estate other than a "successor," as that term is defined in Section 1 above, shall be of no further force and effect simultaneously with the conveyance of any portion of the Real Estate to any person or entity other than such a successor, shall cease to run with the land or otherwise affect the title to any such portion of the Real Estate simultaneously with such a conveyance and none of this Memorandum of Contract, the Original Contract and the April 13, 1989 Memorandum of Contract shall appear as or constitute a lien, claim, encumbrance or other exception to title with respect to the conveyance of any

portion of the Real Estate to any person or entity other than such a successor.

6. Default. The parties agree that they shall in concert take such steps as are reasonably necessary with the County of Lake as may be required to ensure and complete the re-zoning rights and obligations enumerated in this agreement. The parties acknowledge that a breach of any provision of this Memorandum of Agreement would expose the non-breaching party to unique and special damage. Accordingly, each party on reasonable notice and demand shall be empowered to compel the performance of the other in order to complete the zoning process and/or in order to satisfy any of the terms of this Memorandum, or sue for damages in law.

7. Summary. This Memorandum is intended to set out the obligations of IDLP and the parties to the Contract and its amendments and supplements as they exist as of the date of this Memorandum and to clarify that Red Top is being released of its obligations. All parties acknowledge that Red Top has no further obligations to Seller pursuant to said Contract, its amendments and supplements or this Memorandum and has been separately released. Except as expressly set forth herein, this Memorandum does not address the rights of the parties outside the Contract as defined herein as of the date hereof, as relates to the rights and obligations created under the Declaration of Covenants, Conditions and Restrictions for the Mutual Water and Sewer System of the Ivanhoe Club, and any

maintenance agreement arising therefrom and the Declaration of Covenants, Conditions and Restrictions for Ivanhoe Club P.U.D., and in the event of any conflict or inconsistency between the terms and provisions of this Memorandum and any of said instruments, the terms and provisions of said instruments shall govern and control.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of that first day above written.

THORNGATE COUNTRY CLUB,  
an Illinois corporation

By: [Signature]

BROOK-RIDGE DEVELOPMENT, INC.,  
an Illinois corporation

By: [Signature]

Its President

CAPITOL BANK & TRUST,  
not personally, but as  
Trustee aforesaid

By: [Signature]

Its Senior Vice President

RED TOP DEVELOPMENT  
Corporation, an Illinois corporation

By: [Signature]

Its President

IVANHOE DEVELOPMENT LIMITED  
PARTNERSHIP, an Illinois  
registered limited partnership

By: \_\_\_\_\_

Its \_\_\_\_\_

SJS1

maintenance agreement arising therefrom and the Declaration of Covenants, Conditions and Restrictions for Ivanhoe Club P.U.D., and in the event of any conflict or inconsistency between the terms and provisions of this Memorandum and any of said instruments, the terms and provisions of said instruments shall govern and control.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of that first day above written.

THORNGATE COUNTRY CLUB,  
an Illinois corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_

CAPITOL BANK & TRUST,  
not personally, but as  
Trustee aforesaid

By: \_\_\_\_\_  
Its \_\_\_\_\_

BROOK-RIDGE DEVELOPMENT, INC.,  
an Illinois corporation  
corporation

By: \_\_\_\_\_  
Its \_\_\_\_\_

RED TOP DEVELOPMENT  
Corporation, an Illinois

By: \_\_\_\_\_  
Its \_\_\_\_\_

IVANHOE DEVELOPMENT LIMITED  
PARTNERSHIP, an Illinois  
registered limited partnership

By: 2/1/81 Vice President  
Its \_\_\_\_\_

SJS1

CONSENT OF MORTGAGEE

NBD Highland Park Bank, N.A., an Illinois corporation, as Trustee under a Trust Deed on a portion of the Property, dated July 3, 1990 and recorded July 13, 1990, in the Office of the Recorder of Deeds of Lake County, Illinois as Document Number 2924577, as amended by Amendment to Trust Deed dated \_\_\_\_\_, 19\_\_\_\_ and recorded \_\_\_\_\_, 19\_\_\_\_ in the Office of the Recorder of Deeds of Lake County, Illinois as Document No. \_\_\_\_\_, hereby consents to the execution and recording of the within ~~Declaration of Covenants, Conditions and Restrictions for~~ Ivanhoe Club Mutual Water and Sewer System and agrees that said Deed of Trust, as amended is subject to the provisions thereof. S

IN WITNESS WHEREOF, NBD Highland Park Bank, N.A. has caused this instrument to be signed by its duly authorized officers on its behalf, all done at Chicago, Illinois on this 24 day of DECEMBER, 1990.

NBD HIGHLAND PARK BANK, N.A.

By: 

Its: Vice President

Attest:

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that CHAS. W. COOPER Vice President of NBD Highland Park Bank, N.A., an Illinois corporation and WILLIAM T. COOPER Secretary of said Company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such CHAS. W. COOPER President and WILLIAM T. COOPER Secretary, respectively, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, for the uses and purposes therein set forth; and the said WILLIAM T. COOPER Secretary, as custodian of the corporation seal of said Company caused the corporate seal to be affixed to said instrument, as said WILLIAM T. COOPER Secretary's own free and voluntary act, and as the free and voluntary act of said Company, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 21  
day of Dec., 1980

My ~~Commission~~ expires:





STATE OF ILLINOIS     )  
COUNTY OF Cook     )     SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that EUGENE N. LYONS personally known to me to be the President of Red Top Development Corporation and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such \_\_\_\_\_ President and \_\_\_\_\_ Secretary, they signed and delivered the said pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 21 day of December, 1990.

[Signature]  
Notary Public

My Commission expires \_\_\_\_\_



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STATE OF ILLINOIS     )  
                              )  
COUNTY OF COOK     )  
                              )     SS.

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that

F. D. Sove personally known to me to be the Vice president of C.T. ELEVEN, INC., an Illinois corporation, a general partner of IVANHOE DEVELOPMENT LIMITED PARTNERSHIP, an Illinois general partnership and

~~-----, personally known to me to be the~~  
~~----- Secretary of said corporation, and personally~~  
known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President ~~and~~ ~~----- Secretary, they signed and delivered the said~~ pursuant to authority given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, and as the free and voluntary act of IVANHOE DEVELOPMENT LIMITED PARTNERSHIP, for the uses and purposes therein set forth.

Given under my hand and official seal, this 21 day of December, 1990.

Marjorie M. Robinson  
Notary Public

My Commission Expires: \_\_\_\_\_



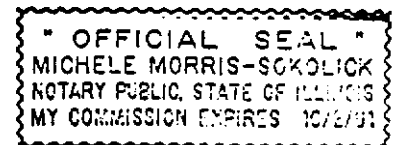
STATE OF ILLINOIS     )  
                              )   SS  
COUNTY OF COOK        )

This is to certify that John E. Houlihan, personally known to me to be the Senior Vice-President of Capitol Bank & Trust, an Illinois banking corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Senior Vice-President he signed and delivered the said instrument and expressly acknowledged to me the execution of the foregoing document as his free and voluntary act, and as the free and voluntary act and deed of said corporation.

Dated this 20th day of December, 1990.

Michele Morris-Sokolicki  
Notary Public

My Commission expires on: October 2, 1991



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RECORDER  
LAKE COUNTY, ILLINOIS

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

1991 JAN 16 AM 10:55

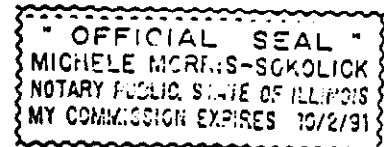
*Frank J. Nuetra*

This is to certify that Wayne LeBlang and Stephen J. Schostok, personally known to me to be the President and Assistant Secretary, respectively, of Thorngate Country Club, Inc., an Illinois not-for-profit corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Assistant Secretary they signed and delivered the said instrument and expressly acknowledged to me the execution of the foregoing document as their free and voluntary act, and as the free and voluntary act and deed of said corporation.

Dated this 21st day of December, 1990.

*Michele Morris-Sokolick*  
Notary Public

My Commission expires on: *October 2, 1991*



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THAT PART OF THE NORTH WEST 1/4 AND THE SOUTH WEST 1/4 OF SECTION 22, TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTH WEST CORNER OF THE SOUTH WEST 1/4 OF SAID SECTION 22; THENCE SOUTH 89 DEGREES 57 MINUTES 29 SECONDS EAST, ALONG THE NORTH LINE OF SAID SOUTH WEST 1/4, 687.78 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 25 MINUTES 07 SECONDS EAST, 96.31 FEET; THENCE NORTH 48 DEGREES 59 MINUTES 52 SECONDS WEST, 281.91 FEET; THENCE NORTH 46 DEGREES 03 MINUTES 39 SECONDS EAST, 350.19 FEET; THENCE NORTH 16 DEGREES 59 MINUTES 46 SECONDS WEST, 717.76 FEET; THENCE NORTH 16 DEGREES 00 MINUTES 14 SECONDS EAST, 545.00 FEET; THENCE SOUTH 41 DEGREES 17 MINUTES 56 SECONDS EAST, 741.26 FEET; THENCE SOUTH 55 DEGREES 12 MINUTES 45 SECONDS EAST, 390.49 FEET; THENCE NORTH 72 DEGREES 29 MINUTES 54 SECONDS EAST, 117.95 FEET; THENCE NORTHEASTERLY 118.30 FEET ALONG AN ARC OF A CIRCLE, WHOSE RADIUS IS 270.00 FEET, AND WHOSE CHORD BEARS NORTH 59 DEGREES 56 MINUTES 46 SECONDS EAST; THENCE NORTH 47 DEGREES 23 MINUTES 38 SECONDS EAST, 168.54 FEET; THENCE SOUTH 42 DEGREES 36 MINUTES 23 SECONDS EAST, 153.87 FEET; THENCE SOUTHEASTERLY 10.47 FEET ALONG AN ARC OF A CIRCLE WHOSE RADIUS IS 70.00 FEET, AND WHOSE CHORD BEARS SOUTH 46 DEGREES 53 MINUTES 30 SECONDS EAST; THENCE SOUTH 51 DEGREES 10 MINUTES 38 SECONDS EAST, 135.93 FEET; THENCE NORTH 39 DEGREES 21 MINUTES 01 SECONDS EAST, 218.72 FEET; THENCE SOUTH 00 DEGREES 20 MINUTES 50 SECONDS WEST, 581.40 FEET; THENCE NORTH 78 DEGREES 48 MINUTES 01 SECONDS WEST, 459.94 FEET; THENCE NORTH 01 DEGREES 44 MINUTES 21 SECONDS WEST, 50.00 FEET; THENCE NORTH 49 DEGREES 14 MINUTES 47 SECONDS EAST, 357.62 FEET; THENCE NORTH 51 DEGREES 10 MINUTES 38 SECONDS WEST, 124.35 FEET; THENCE NORTHWESTERLY 19.45 FEET ALONG AN ARC OF A CIRCLE WHOSE RADIUS IS 130.00 FEET AND WHOSE CHORD BEARS NORTH 46 DEGREES 53 MINUTES 30 SECONDS WEST; THENCE NORTH 42 DEGREES 36 MINUTES 22 SECONDS WEST, 95.32 FEET; THENCE SOUTH 47 DEGREES 23 MINUTES 38 SECONDS WEST, 108.54 FEET; THENCE SOUTHWESTERLY 144.59 FEET ALONG AN ARC OF A CIRCLE WHOSE RADIUS IS 330.00 FEET AND WHOSE CHORD BEARS SOUTH 59 DEGREES 56 MINUTES 46 SECONDS WEST; THENCE SOUTH 72 DEGREES 29 MINUTES 54 SECONDS WEST, 183.14 FEET; THENCE SOUTH 5 DEGREES 45 MINUTES 02 SECONDS WEST, 579.66 FEET; THENCE SOUTH 8 DEGREES 03 MINUTES 14 SECONDS EAST, 259.11 FEET; THENCE SOUTH 18 DEGREES 16 MINUTES 08 SECONDS EAST, 298.21 FEET; THENCE SOUTH 68 DEGREES 45 MINUTES 12 SECONDS WEST, 567.66 FEET; THENCE SOUTH 04 DEGREES 24 MINUTES 21 SECONDS WEST, 65.16 FEET; THENCE SOUTH 19 DEGREES 25 MINUTES 36 SECONDS EAST, 250.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY OF ILLINOIS STATE ROUTE 176, AS DEDICATED PER DOCUMENT 337656, DATED JANUARY 1929; THENCE SOUTH 62 DEGREES 34 MINUTES 19 SECONDS WEST ALONG SAID NORTHERLY RIGHT OF WAY, 304.00 FEET; THENCE NORTH 00°26 MINUTES 15 SECONDS EAST, 170.26 FEET; THENCE NORTH 37 DEGREES 01 MINUTES 49 SECONDS WEST, 188.21 FEET; THENCE NORTH 01 DEGREES 25 MINUTES 07 SECONDS EAST, 565.12 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS, <sup>portion of area</sup> now known as Lots 1 to 74, both inclusive, and Lots 1A to 16A and part of Outlot "A" in Ivanhoe Club Phase II Subdivision.

PARCEL B

THAT PART OF THE SOUTHWEST 1/4 OF SECTION 15, AND THAT PART OF THE NORTHWEST 1/4, AND THAT PART OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 44 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 22. THENCE SOUTH 89°-57'-29" EAST, ALONG THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 22, 395.50 FEET; THENCE SOUTH 00°-04'-41" EAST, 1087.38 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF ILLINOIS STATE ROUTE 176, AS RECORDED PER DOCUMENT NO. 337636, DATED JANUARY 1929, THENCE NORTH 82°-34'-18" EAST, 438.10 FEET; THENCE NORTH 00°-26'-15" EAST, 170.26 FEET; THENCE NORTH 37°-01'-49" WEST, 188.21 FEET; THENCE NORTH 0°-25'-07" EAST, 661.43 FEET; THENCE NORTH 48°-59'-52" WEST, 281.81 FEET; THENCE NORTH 48°-03'-39" EAST, 350.19 FEET; THENCE NORTH 16°-59'-48" WEST, 717.76 FEET; THENCE NORTH 16°-00'-14" EAST, 545.00 FEET; THENCE SOUTH 41°-17'-56" EAST, 741.26 FEET; THENCE SOUTH 85°-12'-45" EAST, 390.49 FEET; THENCE NORTH 72°-28'-54" EAST, 117.35 FEET; THENCE NORTHEASTERLY 118.30 FEET, ALONG AN ARC OF A CIRCLE WHOSE RADIUS IS 270.00 FEET, AND WHOSE CHORD BEARS NORTH 59°-56'-46" EAST; THENCE NORTH 47°-23'-38" EAST, 168.54 FEET; THENCE SOUTH 42°-36'-22" EAST, 153.87 FEET; THENCE SOUTHEASTERLY 10.47 FEET (C10), ALONG AN ARC OF A CIRCLE, WHOSE RADIUS IS 70.00 FEET, AND WHOSE CHORD BEARS SOUTH 46°-53'-30" EAST; THENCE SOUTH 5°-10'-38" EAST, 135.23 FEET; THENCE NORTH 39°-21'-01" EAST, 218.72 FEET; THENCE SOUTH 00°-20'-50" WEST, 581.40 FEET; THENCE SOUTH 18°-58'-52" EAST, 197.80 FEET; THENCE SOUTH 05°-31'-53" EAST, 492.33 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF ILLINOIS STATE ROUTE 176; THENCE NORTHEASTERLY 395.17 FEET, ALONG AN ARC OF A CIRCLE WHOSE RADIUS IS 2905.00 FEET, AND WHOSE CHORD BEARS NORTH 73°-35'-05" EAST, SAID COURSE BEING BEING ALONG SAID RIGHT-OF-WAY LINE, TO A POINT OF INTERSECTION WITH THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 22; THENCE NORTH 00°-04'00" EAST, 19.00 FEET, ALONG SAID LINE, TO THE CENTER OF SAID SECTION 22, THENCE NORTH 00°-04'00" EAST ALONG THE EAST LINE OF THE NORTHWEST 1/4 OF SAID SECTION SECTION 22, 2636.28 FEET; THENCE NORTH 89°-59'-37" WEST, ALONG THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22, 191.66 FEET; THENCE NORTH 00°-22'-02" WEST, 1210.91 FEET, TO A POINT ON THE CENTERLINE OF ILLINOIS STATE ROUTE 60 (594); THENCE NORTH 81°-28'-15" WEST, ALONG SAID CENTERLINE, 489.03 FEET; THENCE SOUTH 83°-13'-04" WEST, 335.76 FEET, TO A POINT ON THE SOUTH LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15, THENCE SOUTH 89°-57'-34" WEST, 477.22 FEET, TO A POINT

ON THE WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15; THENCE SOUTH 00°-13'-02" EAST, 1321.43 FEET, TO A POINT ON THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22; THENCE NORTH 89°-38'-35" WEST, 1294.14 FEET, TO A POINT ON SAID NORTH LINE, 42.40 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 22; THENCE SOUTH 44°-59'-26" WEST, 59.94 FEET, TO A POINT ON THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 22, SAID POINT BEING 42.41 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 22; THENCE SOUTH 00°-01'-44" EAST, 2596.03 FEET, MORE OR LESS, ALONG SAID WEST LINE, TO THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF SAID SECTION 22, ALL IN LAKE COUNTY, ILLINOIS.

**PARCEL D**

THE EAST 250.00 FEET OF THE WEST 876.20 FEET OF THAT PART OF THE  
SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 44 NORTH, RANGE 10, EAST OF  
THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE SOUTHERLY RIGHT-  
OF-WAY LINE OF ILLINOIS STATE ROUTE 176, AS RECORDED PER DOCUMENT  
NO. 337658, JANUARY 1928, ALL IN LAKE COUNTY, ILLINOIS.

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2981799

# LASER DEVELOPMENT COMPANY

Thorngate Country Club, Inc.  
600 Sanders Road  
Deerfield, Il. 60015

Re: Agreement Dated \_\_\_\_\_ of November 1990  
By and Between Thorngate Country Club and Laser Land  
Development Co. Relating to Phase III of the Ivanhoe  
Club ("Agreement")

For and in consideration of the mutual promises and covenants herein contained, and the promises and covenants contained in the Agreement, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Should Laser (as defined in the Agreement) construct Phase III Golf (as defined in the Agreement) and fail to convey Phase III Golf to Thorngate for any reason other than Thorngate's failure to perform its obligations under the Agreement, and, should Thorngate have erected, or caused to be erected an exterior fence around the Laser Properties, (as defined in the Agreement), then, in such event, Laser shall pay to Thorngate the sum of \$50,000.00 as and for compensation to Thorngate for the possible costs incurred in erecting an additional fence between the Ivanhoe Club (as defined in the Agreement) and the Laser Properties.

2. Said sum shall be paid promptly upon demand upon Laser.

3. This covenant is provided to Thorngate as an additional inducement to Thorngate to execute the Agreement.

THORNGATE COUNTRY CLUB, INC.  
AN IL. NOT-FOR-PROFIT CORPORATION

BY: \_\_\_\_\_  
ITS \_\_\_\_\_

LASER LAND DEVELOPMENT COMPANY,  
AN ILLINOIS CORPORATION

BY: \_\_\_\_\_  
ITS PRESIDENT \_\_\_\_\_

THIS INSTRUMENT PREPARED BY AND  
UPON RECORDATION SHOULD BE RETURN-  
ED TO:

Stephen J. Schostok, Esq.  
Laser, Schostok, Kolman & Frank  
30 North LaSalle Street  
Chicago, Illinois 60602-2604

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR THE MUTUAL WATER AND SEWER SYSTEM  
OF THE IVANHOE CLUB

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MUTUAL WATER AND SEWER SYSTEM OF THE IVANHOE CLUB ("this Declaration") is made this 21 day of December, 1990 by CAPITOL BANK OF CHICAGO ("Trustee"), not personally but solely as Trustee under a Trust Agreement dated December 1, 1986 and known as Trust No. 1250 (the "Trust"), RED TOP DEVELOPMENT CORPORATION, an Illinois corporation ("Red Top"), BROOK-RIDGE DEVELOPMENT, INC., an Illinois corporation ("Brook-Ridge"), and THORNGATE COUNTRY CLUB, INC., an Illinois not-for-profit corporation ("Thorngate").

W I T N E S S E T H:

WHEREAS, Trustee holds legal title to certain real property located in unincorporated Lake County, Illinois, situated southeast of Route 60 and Fremont Center Road near the Village of Mundelein and legally described in Exhibit A attached hereto and made a part hereof (the "Golf Course Property") and in Exhibit B attached hereto and made a part hereof (the "Sewer System Property"); and

WHEREAS, Thorngate, as the legal beneficiary of the Trust, holds the beneficial ownership interest in the Golf Course Property and the Sewer System Property; and

WHEREAS, Red Top holds legal title to certain real property located in unincorporated Lake County, Illinois, situated southeast of Route 60 and Fremont Center Road near the Village of Mundelein and legally described in Exhibit C attached hereto and made a part hereof (the "IDLP Property") [the Golf Course Property, the Sewer System Property and the "Residential Property" (as hereinafter defined) are hereinafter referred to as the "Property"]; and